

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, July 15, 2009*. The meeting was called to order, and began with the Pledge of Allegiance.

John Mattis, Chairman presided and other members of the Board were in attendance as follows:

Charles P. Heady, Jr.
James Seirmarco
David S. Douglas
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
James Flandreau, Clerk of the Zoning Board
John J. Klarl, Deputy Town attorney

ADOPTION OF MEETING MINUTES for 05/20/09 and 6/17/09

Mr. John Mattis stated now we will have the adoption of the minutes of May and June, seconded with all in favor saying “aye.” The meeting minutes are approved.

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CLOSED AND RESERVED DECISIONS ADJOURNED TO NOVEMBER 2009

Mr. John Mattis stated for information we have several closed and reserved decisions which are adjourned to November. (*The following was read by Mr. John Mattis.*)

- A. CASE No. 51-08** **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**

- B. CASE No. 06-09** **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.

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CLOSED AND RESERVED DECISIONS ADJOURNED TO AUGUST 2009

Mr. John Mattis stated we also have a closed and reserved decision which is adjourned to August. *(The following was read.)*

- A. CASE No. 23-07** **Congregation Yeshiva Ohr Hameir** for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, non-conforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at **141 Furnace Woods Road, Cortlandt.**

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ADJOURNED PUBLIC HEARINGS

- A. CASE No. 08-09** **Jorge B. Hernandez, RA for M & S Iron Works** for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the property located at **439 Yorktown Road, Croton-on-Hudson.**

Mr. John Klarl stated as to this application, it's for a special trade contractor and we know there's been legislation by the Town Board concerning a Moratorium and so at our work session on Monday we discussed adjourning this to the September meeting.

Mr. John Mattis asked do we have a motion to that effect, so moved, seconded with all in favor saying "aye." That's adjourned to September.

- B. CASE No. 11-09** **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8th Street, Verplanck.**

Mr. John Klarl stated once again we discussed at our work session on Monday night and given the fact that this Board is writing to the Town Board concerning the unusual zoning district line that is placed through the property we had discussed adjourning this to the September meeting.

Mr. John Mattis asked can we have a motion? So moved, seconded with all in favor saying "aye." That's adjourned to September.

C. CASE No. 14-09 **Linda O’Buck** for an Area Variance for the front yard setback for a proposed front porch on the property located at **95 14th Street, Verplanck.**

Ms. Linda O’Buck asked did you check the drawings and now you have the revise ones?

Mr. John Mattis responded yes we got them last month at the meeting. We’ve now had time to review them. We discussed them at our work session and the only change we really saw was the canopy was 5’ x 5’ and you requested 6’ x 6’ which is no problem.

Mr. James Seirmarco stated I appreciate the fact that this was a much better set of drawings and they were complete and I have no problem with this and I’m in favor of this.

Mr. John Mattis asked are there any other comments? We pretty much did our review last month. Anyone in the audience like to speak?

Mr. James Seirmarco stated I make a motion we close the public hearing on **case no. 14-09**, seconded with all in favor saying “aye.” I make a motion that we grant an area variance for the front yard setback for a proposed 6’ x 6’ canopy over the front door from a required 35 feet down to 14 feet and an area variance for the front stairs from a required 29 feet down 9.3 feet on the above-referenced property. This is a type II SEQRA no further compliances required, seconded with all in favor saying “aye.”

Ms. Linda O’Buck asked do I get any of that paperwork?

Mr. James Flandreau responded yes we’ll have it sent out to you next week sometime.

D. CASE No. 18-09 **Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

Mr. Ed Gemmola presented himself to the Board and stated the architect for this project. Mark Picucci the owner is here. This project is a mixed use project HC9A zone and it’s adjacent to landmark wise is an Indian restaurant right here. This existing building here is mixed use which is Mr Picucci owns also which is retail and five apartments up above. This was done quite some time ago when it didn’t have the 25 foot buffer. We’re allowed to put more units in the building. What I brought along today was the first go-around which I believe we presented at one point to the Zoning Board as we actually had two buildings and we have 46,990 square feet so by calculation from the Zoning Ordinance if you divide it by 7,500 square feet, this is septic not sewer, we’re allowed to get 6.26 apartments and that’s what we were proposing. Retail with apartments above. We had two buildings, economically it was a real expensive solution and what we tried to do was to incorporate just one building, use the parking and same scenario, retail on the ground floor which is approximately 4,830 square feet of retail and we have what we’re proposing and what the subject of the variance is six one-bedroom apartments and it adds up to roughly 5,750 square feet. These top floor would cantilever so we have a little walkway

undercover if you park you could walk here to get into the stores and a porch effect in the back. Very similar to what we had in the building adjacent. What we are going by was a letter I received from Mr. Flandreau and he rightly so interpreted the Code where we were supposed to have four units maximum per building and our basic argument is that we're allowed two-bedroom units so we could have had six two-bedroom units and we feel that with six one-bedroom units in the one building would be a detriment to the Town and we're here for that interpretation of hopefully a favorable variance and I can answer any questions that you have. In terms of all the rest of the zoning we feel we are in compliance. We realize we still have to go to the Planning Board so as soon as the opening case there are other issues that come up. We'd like to proceed and go to the Planning Board knowing that hopefully this is a doable project.

Mr. Mark Picucci presented himself to the Board and stated 2081 Albany Post Road, Montrose. Originally when we did the first building it was the same problem where we were allowed to do four units under one roof and it was another proposal of two units but the zoning has changed since then, but back then we did a 281 cluster subdivision and I guess it doesn't fall under that criteria now with the change of the zoning of that property.

Mr. Raymond Reber stated the issue for us is very limited as you indicated and it's the limitation of four apartments per building, per lot and you had indicated earlier that you had a layout of separate buildings on this parcel which is another possibility which wouldn't require this kind of a variance. You mentioned at the same time economics, the economic part we would have to discount because we don't make rulings based on economics. However, I do support your proposal to ask for the variance because overall it makes for a much cleaner layout, much more efficient layout on the property and there is a benefit to the fact that, as you say, it's a one-bedroom instead of two bedrooms. I think we are better off with six one-bedrooms there than we are four two-bedrooms and then the other building has apartments. Since one way or another you have the right to build some commercial residential mixed use on this site, I think the way you're proposing to use this site is preferred and more efficient and therefore I think granting the variance to allow the six units in one building makes sense and I would support the request for a variance.

Mr. John Mattis asked other comments from the Board?

Mr. James Seirmarco stated I think this is a much cleaner design. There's adequate parking. You're not looking for any variances in parking. There's only one ingress/egress. It could have been broken up in more with two buildings, so it's a much cleaner design and I think one-bedroom apartments typically limit the number of children so it's a win-win situation.

Mrs. Adrian Hunte stated and the one building provides for less site coverage so I think for safety purposes that helps as well.

Mr. Mark Picucci stated just less impact.

Mr. Charles Heady asked you cut the apartments down from two to one-bedroom apartments, is

that right?

Mr. Mark Picucci responded right.

Mr. Charles Heady stated in other words you have less parking that you need, am I right on that?

Mr. Mark Picucci responded yes although I think the Code might still – I think it's on a per-dwelling unit basis we might still have provide two per unit, if they have guests, you might have a need for that. I don't think the Code allows less parking for the apartments. It goes by dwelling units.

Mr. Charles Heady stated I thought it would because of the people being in there. Two-bedrooms would make it more people.

Mr. Mark Picucci responded I believe so yes.

Mr. Charles Heady stated but you said the parking would be less for you to have there had a one-bedroom I thought. The Code doesn't say that Jim?

Mr. James Flandreau responded I believe for a dwelling unit I think it starts at two parking spaces and after a certain amount it can go up from there. A one-bedroom would need two spots so if a husband and wife move in there starting out with a single bedroom they'd probably have two cars compared to a two-bedroom which maybe two single people, so it's probably the same impact for the cars.

Mr. Ed Gemmola stated what generally happens because we have a building of our own down in Hawthorne is the parking during the day, weekdays, it is less because people work those cars are missing so it generally dovetails good with commercial use but you always have an argument that on a Saturday and Sunday if you have stores open then you could have a problem so if we went with less cars you might have a guest over or something like that on the weekend.

Mr. Wai Man Chin stated I like the idea of one building rather than the two buildings because I think the parking, brings the parking more closer towards the front right away in the back as the first proposal was and now you've got a lot more greenery back there. I think that would look nicer.

Mr. John Mattis stated on the surface it's like you're only allowed four dwelling units, why are we allowing six. But when you look at the fact that you are allowed to do the six in two buildings you're only doing it in one and for all of the reasons mentioned that it's less intensive, it makes much more sense. It's a good proposal.

Mr. Mark Picucci responded thank you.

Mr. John Mattis stated anyone in the audience would like to speak regarding this case?

Mr. Raymond Reber stated I make a motion on **case 18-09** to close the public hearing, seconded with all in favor saying “aye.” I make a motion on **case 18-09** for an area variance for the dwelling count for a proposed mixed-use building from an allowed four dwellings up to six dwellings on the above-referenced property on Albany Post Road. This is a SEQRA type II no further compliance required.

Mr. John Klarl stated just before we vote Mr. Chairman, maybe we should put this on a closed and reserved status number one to write it. Number two SEQRA requires that we coordinate and review with the Planning Board. If you’re doing a Planning Board application just like your Yeshiva application so we should direct the approval, we’ll do the reserved status and hold it...

Mr. John Mattis stated and should another issue arise with the Planning Board we can just re-open the case.

Mr. John Klarl stated it should be a closed and reserved but directing that the result.

Mr. Raymond Reber stated let’s modify that to a closed and reserved, seconded with all in favor saying “aye.”

E. CASE No. 19-09 John A. Sarcone III for an Area Variance for the side yard setback to legalize the enclosed porch on the property located at **65 Furnace Dock Road, Croton on Hudson.**

Mr. John A. Sarcone III presented himself to the Board and stated I assume that everything is in order this week. This is an application for a three foot variance. This was a porch that was enclosed. To my knowledge it has been past all the Code and other inspections that is required. I believe we meet the standards and requirements for a variance at this time and certainly there’s no undesirable change to be produced. It’s abutting Route 9A. I went through all of the elements at the last meeting and don’t want to bore the members. I’ll answer any questions if there are none then I’ll yield to the Chair.

Mr. James Seirmarco stated I think when we reviewed this detail the last time there was a problem with the administrative end of it and this time everything’s in compliance. This was picked up during the building permit review process and I don’t see a problem with this and I am in favor of this.

Mr. David Douglas asked one clarification it abuts Route 9 or Route 9A?

Mr. John A. Sarcone III responded it’s Route 9.

Mr. David Douglas stated I just want to make sure the records clear, it abuts 9 not 9A.

Mr. John Mattis asked any other comments? Anybody from the audience would like to speak?

Mr. James Seirmarco stated I make a motion we close **case 19-09**, seconded with all in favor saying “aye.” I make a motion we grant an area variance for the side yard setback to legalize an enclosed porch from a required 30 feet down to 26.5 feet on the above-referenced property this is a type II SEQRA no further compliance is required, seconded with all in favor saying “aye.”

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NEW PUBLIC HEARINGS

A. CASE No. 21-09 **Charles L. Roberto** for an Area Variance from the rear yard setback requirement for an existing accessory structure (shed) on the property located at **140 Sunset Road, Montrose.**

Mr. John Mattis stated you want to just briefly explain what the case is and what you’re here for.

Mr. Charles L. Roberto stated I have a shed in the backyard, in the rear, that the left side is okay for the variance but the right side is only a little over a foot. The shed’s been there for over 40 years in that spot. I’m looking for a variance for that right side and I can’t move it out – it’s on 4’ x 4’ posts and there are two trees on each side of it in the front.

Mr. Raymond Reber stated as the applicant indicates it is only a foot off the property line however when you look at the properties their shed is way back from the house. It’s a deep lot. It narrows down. It actually abuts a confluence of other lots that come together in the back so that there’s is far away from any neighboring houses they possibly can get and, in fact, the one neighbor right behind them also has a shed that’s essentially right near the property line, almost backing up against their shed. Considering that these sheds have been there for many years that there is far removed from any of the residences, their own and the adjoining, that the neighbor has a similar shed and obviously these have had no impact on the neighborhood I would be agreeable to granting the variance to leave the shed where it is.

Mr. John Mattis stated we also have a letter from the former neighbors stating that the shed was there prior to the Roberto’s moving in so they inherited this situation they did not create this situation. Any other comments? Anyone in the audience?

Mr. David Douglas asked I thought that there was a recommendation that they get a certification that the shed was in fact no closer than 1.09....

Mr. John Mattis responded we were going to grant this it said 1.09, we’re going to grant it to one foot instead of splitting hairs and you’ll need a certification. Somebody can come out, a surveyor, just look at that point make sure it’s just a foot away from the property line.

Mr. Charles L. Roberto asked I have to get a survey?

Mr. James Seirmarco responded not a whole survey.

Mr. Raymond Reber stated just get a surveyor to just mark that one point. Just check that one dimension that's all.

Mr. James Flandreau stated and we can get it by letter. If you want to come into the office I can explain the whole procedure to you.

Mr. Raymond Reber stated it's mainly because you're so close to the line that God forbid it's not one foot off.

Mr. John Klarl stated but the surveyor wouldn't do the whole survey of the property it would say it's a letter of certification saying that it's one foot off of the property line. A brief simple letter.

Mr. Raymond Reber stated I make a motion on **case 21-09** to close the public hearing, seconded with all in favor saying "aye." I make a motion on **case 21-09** that an area variance for an accessory structure (shed) in the rear yard setback requirement from the required four feet down to one foot on the above-referenced property conditional on a certification that it is at least one foot off the property line, this is a SEQRA type II no further compliance required, seconded with all in favor saying "aye."

Mr. John Mattis stated your variance is granted.

B. CASE No. 22-09 Rhonda Salters and Victor Lyons for an Area Variance from the rear yard setback requirement for a proposed open deck on the property located at **31 Sassinoro Boulevard, Cortlandt Manor.**

Mrs. Adrian Hunte stated Ms. Salters and Mr. Lyons would you please describe for us what the shape of your property and what it is you're trying to do.

Mr. Victor Lyons stated the shape of my property is about 50 feet set off the road. I have no neighbors on the left or the right of me. It's setback – we have a slope that's about 30 feet from the house. We have a deck there that the builder built which is 5' x 7' and we were asking to build the deck and we were told that we would have to get a variance for what reason I don't know but we had submitted a plan and the plan is a pretty good deck that I think should meet all of the requirements of the Board if you take a look at it.

Ms. Rhonda Salters stated the property is part of a subdivision. It's part of Cortlandt Ridge.

Mr. Victor Lyons stated my neighbors down the block, they all had decks done and I thought the outside, the back of our own was the same dimensions as theirs and we were told we had to get a

variance and that's why we're here.

Mrs. Adrian Hunte stated the variance required is 13.5 feet and that's considered somewhat substantial since it's required 24 foot setback and you want to have 10.5 feet so that means we would have to do more than a 50% variance. That's why it creates some issues for us.

Ms. Rhonda Salters stated the subdivision only we're required to have a variance. I couldn't understand why the other properties situated similar to ours.

Mr. John Mattis stated you're on what they call a flag lot where you have a driveway coming into your lot. Your lot's kind of behind and you have a smaller lot. Setbacks are required on all of those but since their lots are much deeper they can have a bigger deck and not come within that 24 feet that's required from the property line.

Ms. Rhonda Salters stated so it's where their house is positioned on their lot.

Mr. John Mattis stated they didn't require any variances.

Mr. James Flandreau stated it's how the lot was created when they did the subdivision and also how the house is where it sits on the property for your neighbors compared to yourself that's what's making you have to come before the Board to ask for the variance.

Mr. Victor Lyons asked it was okay for the builder to build it that way knowing that – I had no knowledge of a variance of what I need to get a deck built. At the time of buying the home, the builder said “hey, you guys can put a deck. You can put a bigger deck.” When the builder was building it. The builder knew that that lot required a variance at the time?

Mr. James Flandreau stated he conformed to the setback requirements of how big that deck was. You're coming in to ask for a bigger deck by going farther away from the house it encroaches now into the rear yard setback and that's where you have to get a variance where the builder with a smaller deck didn't need to get the variance.

Mr. James Seirmarco stated and he probably knew.

Mrs. Adrian Hunte asked could you build one that's smaller, larger than what you have and smaller than what you're looking for?

Mr. Victor Lyons asked more than what we're attempting to build now?

Mr. James Seirmarco stated yes.

Mr. Victor Lyons responded the deck that we have now is so small it's 5' x 7' like I said.

Ms. Rhonda Salters stated what we have now is more like a terrace not a deck. All it fits is the

....

Mr. Victor Lyons continued it fits a grill, two chairs and the steps that's going down to the ground. There's really – there's no one on the side of us, there's no one behind us, homes that is. It's just wooded area. Can I build a smaller deck? We did downsize this deck that we have.

Ms. Rhonda Salters stated we could build a smaller deck going proportionally to the house itself. I'm not sure...

Mr. David Douglas stated my personal concern is that if a variance were to be granted to you it seems to me that would setting a precedence for other people who would come in and say "well we want to build a larger deck." And I would have trouble distinguishing why you would be allowed to do one and they wouldn't. The Town has certain requirements for setbacks and...

Ms. Rhonda Salters stated can you explain to me what a setback is. Is it for safety issues? I'm not sure what it is.

Mr. David Douglas responded it's safety and esthetics and depending on the size of the lot and the building or a deck or a structure has to be within 'x' amount of feet from the property line and it depends on the size of the property and the Code has a chart and it says what the setbacks are and in order to – you're not allowed to build within those setbacks without getting a variance. In order to get a variance you have to show or meet certain requirements and one of the factors that is considered by this Board is the precedence that it would set and that to me is what's holding me back from voting, I can't speak for anybody else, personally I would have a lot of difficulty voting in favor. I understand the reasons why you want a larger deck but I would have trouble voting in favor of it because then next month somebody's going to come in and say "our deck's too small and we want to do it." It's just going to go down the line.

Ms. Rhonda Salters stated I just want to bring to your attention that it doesn't impact on anybody else. It's not encroaching on anyone else's property. We're kind of set back by ourselves.

Mr. John Mattis stated there is another issue too. The issue of setting a precedence because that has legal standing so if we want to turn down the next one and they say they can go to court and appeal and it wouldn't be looked on too favorably. The other issue is the percentage of the variance and it's close to a 60% variance and that's quite large and we rarely grant a variance that large because you're required 24 feet and you want to go down to 10.5. There is a solution where you wouldn't even need a variance. If you did it as a patio rather than a deck and I don't know that you even want to consider that.

Mr. Victor Lyons responded we did think about it at one time and we do have doors that come out that's a walk-out that was set up like a deck.

Ms. Rhonda Salters stated there's a walk-out on the bottom there's a basement but that's not a finished basement so they have a patio there.

Mr. Victor Lyons stated the walk-out that's upstairs is walking out from the kitchen where we have the 5' x 7' deck that we have there.

Mr. John Klarl asked does it have stairs that deck down?

Mr. Victor Lyons responded the stairs the builder built the steps going down to the ground it leads to the grass.

Mr. James Seirmarco asked is there a way of going the other direction away from the setback?

Mr. Victor Lyons responded that's what we've done. We have to the right of our home would be the property line so we decided to come to the left of our home where we're coming directly behind our home. The way we had planned the deck – we kind of tried to center everything behind the home itself.

Mr. Wai Man Chin asked I was just going to say before this was a subdivision under section 278 cluster. Therefore the houses of the subdivision were constructed using the R-20 zoning district requirements.

Mr. Raymond Reber stated the issue of setting a precedence on granting such variances I would be able to justify my own mind a small variance and looking at your plans of what exists there currently. Your current deck is 2,060 from the property line and that allows for the stairs to go down along the back of the house as it exists. So, that means it must be at least four foot beyond the house for those stairs. If my colleagues were interested in maybe a four foot variance which is a relatively small variance on a 24 foot requirement that would then give you another six feet which would more than double the size of that deck and it would allow the deck to also extend somewhat to the side so you would have probably an eight foot deck right in that one section to the side which means you have a reasonable size deck, it's not big, but it's reasonable. Your variance would only be four feet and the justification, the only way I would justify it is you are in a clustered housing project where your property abuts against open space. So, the only ones you're going to affect are the rabbits and the deer and the antelope and whatever. For that reason only, I would consider a four foot variance.

Mr. David Douglas stated I'll tell you what my problem with that is; it's that justification applies to basically, I don't have the entire subdivision map in front of me, but it applies to a number of people in this particular development and other developments in Town and that's the precedence I'm concerned about.

Mr. Raymond Reber stated like I said, most times we have setbacks so that you're not so close to your neighbor that you're disturbing them, that's the real issue of why we have setbacks particularly for decks. You don't want somebody on a deck looking down into your yard from three feet away. That's the only reason why I would consider it here because it's wilderness and I don't think the deer are going to know whether it's 24 or 4. So, a minimal size I'd say I think is

still within the spirit of the Code and the setbacks.

Mr. David Douglas stated I understand what you're saying but I'm not convinced.

Mr. James Flandreau stated just to give the Board some information about the rest of the properties along Sassinoro Boulevard, they're all rectangular lots, they all have a steep slope at the rear of the property so if you were out at the site you might see a fence line but the property extends past that so they do have a much greater backyard for the rest of the properties along...

Mr. John Mattis stated then what's apparent because where the fence where the drop-off begins.

Mr. James Flandreau stated right there's a drop-off probably, I forget the exact number, maybe another 30 feet or so.

Mr. Wai Man Chin stated I understand what everybody is saying. If that deck – I'm looking at the plan, showing where it was 13 foot wide at – I guess from the wall right there by 24 foot 5, if that was 12 foot wide and the steps came down from the side of the house rather than the back of the house and he did away with that octagon or hexagon...

Mr. John Mattis interrupted gazebo.

Mr. Wai Man Chin continued I wouldn't have a problem with that being 12 foot which will make it 17 from the 24 which is only about a seven foot variance. That's not a lot in this situation. Seven foot to 24 it's now almost half.

Mr. James Seirmarco stated it's about 30% instead of 60%.

Mr. Victor Lyons stated by taking the octagon out, that's 30%.

Mr. James Seirmarco stated squaring it off and making the stairs go in the other direction.

Mr. John Mattis stated the stairs count against you but you can't really use it as part of the deck so if you move it to the side.

Ms. Rhonda Salters asked to the side near where the octagon is?

Mr. Wai Man Chin stated or the other side. I'm just giving you my opinion of how I would grant something to this effect and I don't know how the rest of the Board feels but that's how I would say "okay."

Mr. James Seirmarco stated I would say the same thing. We really shouldn't do the design here but you can understand that most of us feel that that 60% variance is just too much. If you were getting within the 30-35% range I think everybody would be much more redeemable. I'm not sure that we would approve it but we would certainly entertain it better.

Mr. John Mattis stated keep in mind that the variance is going back, it's not going sideways so where your gazebo and stuff is if you want to extend a little further that way.

Ms. Rhonda Salters stated my understanding was we would need a variance on the side also.

Mr. Raymond Reber responded if you went out to the side.

Ms. Rhonda Salters asked but we could put the stairs there.

Mr. James Seirmarco stated the other side's okay.

Mr. Wai Man Chin responded from where I see the house is 10.94 or 11.26 or something like that and that point, that corner right there is 15.81, it wouldn't be coming out any further than the house on the side.

Mr. James Flandreau stated the R-20 zone is a maximum of 10 feet for the side yard setback so you could actually encroach a little bit farther into the setback.

Mr. Wai Man Chin stated for a four foot set of stairs it won't come out past that.

Mr. John Mattis stated you could have a stairway...

Mr. James Seirmarco interrupted and we shouldn't be doing the design here but you can understand where we're coming from. Talk to your architect.

Mr. John Mattis stated you might want to talk to the architect and coordinate with Mr. Flandreau.

Mr. James Flandreau stated if you would like to come in and see me I could explain to you what the Board has suggested that they might be able to grant a variance and then you can go back to your architect.

Mr. Victor Lyons asked how about if I take the octagon throw it on the right side where the steps are and take the steps and put the steps going down?

Mr. Wai Man Chin stated again, that's up to you to design...

Mr. James Seirmarco responded yes, and yes and yes.

Mr. Wai Man Chin continued I'm just giving you my idea how far I would go total and that's 30% rather 60% I wouldn't have a problem with that.

Mr. John Mattis stated I think you're getting the feeling that the majority of us would give you a lesser variance and you can work with Mr. Flandreau and your architect and come in next month,

and if you can't get it done next month maybe the month after.

Mr. Victor Lyons stated we'll redesign it and come back next month.

Mr. Wai Man Chin stated you can see Mr. Flandreau and talk to him about it and what we could do is we could adjourn this to next month.

Mr. John Mattis asked is there anyone in the audience who would like to speak?

Mrs. Adrian Hunte stated on **case 22-09** for an area variance from a rear yard setback requirement for an open deck at 31 Sassinoro Boulevard, Cortlandt Manor I make a motion that we adjourn this matter to the August, 2009 meeting for the purpose of allowing the applicants to confer with their architect and also with Mr. Flandreau concerning the design of the deck, seconded with all in favor saying "aye."

Mr. John Mattis stated that's adjourned. Next month's meeting is the third Wednesday which is August 19th.

C. CASE No. 23-09 Matt Mello for an Area Variance from the front yard setback requirement for a proposed porch on the property located at **25 School Street, Cortlandt Manor.**

Mr. Matt Mello presented himself to the Board and stated I'm asking for a variance for the front of my house so that I can put a porch on the front. I think the setback is 31 feet right now. We just want to put a six foot porch on the front of the house, I guess extend out to six feet. I don't know what else to say.

Mr. Charles Heady stated I was out there and Mr. Mello, the applicant and talked to him about the porch and I told him I noticed the house to the right, from the house itself is about 4'6" it comes out further past his and also with a bay window on it, it comes out to almost six foot, the other house to the right of him. And, also the house to the left of him has a bay window that comes out where the stairs also not as much maybe four foot. In general, in there they're about the same lined up when I looked down to some of the houses there. He also said if we had letters from your two neighbors to the left side and the right and they would have no problem with it and they'd want to see him get the variance and since they have no problem with it, it means quite a bit to the Board. The variance isn't that much I don't think from what I see.

Mr. John Klarl stated Mr. Heady said we have a letter the Board has received tonight from Suzanne and Tony Goncalves on 23 School Street, Cortlandt Manor. We have a letter from Jane and Andrew Gannon on 26 School Street, Cortlandt Manor.

Mr. John Mattis responded they're both favorable.

Mr. David Douglas stated I think Mr. Mello can probably guess what I'm going to say. I think

also the reason we have letters like that, one of the reasons is that it seems to me that if we were to grant the requested variance we would find that we would have to grant similar variances to – I drove up and down that block and I think we’d have to grant similar variances to at least a dozen if not more of the neighbors that are going to come flooding in here and we’d have to grant them all and we would have to change the zoning that’s applicable to this section of Town on this street. The houses, there’s some slight differences on how far back they are, it’s a matter of a couple of feet but for the most part most of the houses on that side are all lined up basically equally and they’re all going to come in here and they are going to say “well you gave Mr. Mello one, you’ve got to give me one, you’ve got to give the guy next to one,” and we’ll have to give it to everybody and I think we should defer to – I wasn’t facetious but as I said at our work session the Town Board in its wisdom sets certain zoning for this section of Town and I think that ordinarily we should defer to the judgment of the Town Board in setting that zoning unless there’s some specific reason in a specific property to grant a variance and I don’t see that here.

Mr. Matt Mello stated I have pictures here. I don’t know if anybody wants to take a look at the pictures but my family’s not in it, my children, it’s just the front of the house it kind of gives you the view of looking down my property to the neighboring property that Mr. Heady was talking about how that one kind of sticks out farther. Hopefully you take a note of the existing front stoop. We have children that like to play in the front yard and they like to play with the neighboring children in the front yard and we have to sit on that front stoop there which esthetically is not that pleasing and I know there’s other options we could go with here but it would be nice just an addition on the house to be able to put a front porch out there that we’re trying to make it as narrow as possible. We didn’t try and go out any farther than we had to, that’s why it’s only six feet wide. We figured that would be big enough to maybe put two chairs on there and be able to sit and watch the kids play in the front yard. That was really the gist of all of this, having small children in the neighborhood. It’s a good place to sit and keep an eye on everybody in the neighborhood. That would be the major reason why I’ve gone with this. Would you like to see the pictures?

Mr. John Mattis responded yes. I was also out there and looked at the property. I drove by and while it doesn’t protrude out much more than the others if they would put this porch, the concern is and we’re much more strict with front yard variances obviously because how many more people could come in. We had a case one time where the whole neighborhood came out and wanted a garage that needed a variance because they all wanted a garage. None of the houses had garages. Sometimes when you get neighbors that say they like it, they like it for the same reason that they like it for themselves and one thing you mentioned is there are other alternatives and that’s one of the things we should look at are there other alternatives? There are other alternatives to dress up that front stoop without putting a porch like this.

Mr. James Flandreau stated if he was to remove the roof of the porch, the deck part of it to coming out six feet would still comply to the setback for a deck because a deck’s allowed to encroach farther into the setback. So, if you take the roof part off of it you could still have your sitting area still the same size of what you wanted to do.

Mr. John Mattis stated you just wouldn't have the roof over it.

Mr. Matt Mello stated I guess the other thing is we put an addition on the house and in front of the front door there's nothing hanging over the front door so one of the other things we were trying to do with this was trying to create an area where when you walk into the house, you get your keys out you've got some covered area above you. It developed into this and I like my neighbors. Their concern is that other people put a front porch in the front of their house that means more people would be hanging out in the front of their house talking with everybody else on the road. I don't know if that's necessarily a bad thing.

Mr. John Mattis stated it could be good or it could be bad but on the other hand then it creates a reason why we have to give more variances and there should be a specific reason why we give a variance rather than giving it to you and then giving it to everybody else. We might as well rewrite the Code if we do that.

Mr. James Seirmarco asked is it imperative that you have the cover over the door rather than?

Mr. Matt Mello responded one of the original plans we looked at was almost like some sort of A-frame thing jutting out over the front door but that still keeps us with that little stoop there in the front where you couldn't sit on that. And, then I thought well if you extend the deck out with that one – it just looks awkward to have this A-frame thing that's maybe four or five feet wide and then a bigger deck extending out, it didn't esthetically look pleasing. So, we tried to come up with an option that when people drive by they look and go "that actually looks nice." And, then it accommodates all of those other options that I was talking about.

Mr. Raymond Reber stated you rightfully say esthetics that's the main benefit of the porch. The usefulness of it, yes, in communities where houses are within a few feet of the sidewalk and they have a porch people intermingle but I can guarantee you my daughter lives in a community where all the houses had porches and they're all set back 30 or 40 feet, they don't get used, they just don't get used. They're there for esthetic looks and that's it. We do consider variances for what you claim you're not interested in which would be a portico something to protect the entranceway. If you don't like the idea of a deck running out from that as we said to the previous applicants you can have a patio in the front. A nice flagstone patio to sit on to watch your kids. Personally, I would not want to encourage people to have their kids playing out in their front yard and the streets, they should be in people's backyards. If you're sitting on a patio 30 feet from the road you'll never catch that kid before the car hits him in the street. I agree with my colleagues the question of a porch setting the precedence. The reason why the Code says well a deck okay a porch not is that it's a big leap to go from a deck to a live-in space. But we've seen all too often how easy it is for a porch to all of a sudden end up becoming live-in space. You know, they put a half wall up, then they put screens on it, they replace the screens with windows and all of a sudden it becomes another room and that's why the Code is written that way so I personally would have great difficulty in going with the porch for the reasons that I've stated. I do think that it sets a precedence in a neighborhood that would change the character of the neighborhood.

Mr. John Klarl stated Mr. Reber's right when he says that this Board is consistently allowed porticos to protect people from the weather getting in and out of a house. That's been a consistent application's been granted by this Board.

Mr. James Flandreau stated they approved one tonight in **case 14-09** the same situation what she came in on two months ago and it now is what she has is just a portico with a deck.

Mr. John Mattis stated and she wanted a full front porch too.

Mr. Raymond Reber stated yes six foot wide by six foot deep portico over the front entrance to protect her from the weather.

Mr. Matt Mello asked so six foot wide and six foot deep?

Mr. Raymond Reber responded I would consider something like that on the entrance.

Mr. Charles Heady asked if we granted a variance for the porch could we put a stipulation in like what he was saying couldn't close it in later on and make a room out of it which he's concerned about?

Mr. John Mattis responded yes but that's not my concern, my main concern with why we wouldn't grant this but yes we could put that stipulation in there.

Mr. Raymond Reber stated the trouble with those stipulations is they're tough to enforce. Ten or fifteen years down the road – once you've gone down that road those stipulations – if you don't put a roof up then there's no chance that they're going to do anything.

Mr. James Seirmarco stated if you've lived so long without the roof, the deck is very important, than maybe you just go with the deck.

Mr. Matt Mello stated like I was saying we just put an addition on the house so the front of the house changed where it had a little bit more of an overhang and now we put a second floor on so the overhang is much farther up there so we're much more exposed so that's why we came up with or tried to come up with several scenarios that would work with all this. What about our neighbor's house if you look at those pictures it's obvious that the neighbor's house if they have the same 25 foot setback which we have which I assume that they would, they must be encroaching on that 25 foot setback.

Mr. John Mattis stated I've been on this Board for 15 years and I don't recall giving a variance for anything like that. They might be right on the setback line. I couldn't answer that question.

Mr. Wai Man Chin stated it's hard to say. I happen to agree with Mr. Heady. I don't think this is such a great variance but that's my opinion but I agree with Mr. Heady on it.

Mr. James Seirmarco asked you would like to think about this a month or you want us to vote this evening?

Mr. Matt Mello responded if you vote this evening and it's turned down, I can still come back with another plan?

Mr. John Mattis responded yes but you would have to start over.

Mr. Matt Mello stated I would have to start over at that point?

Mr. John Mattis stated and you'd have to apply again. If we adjourn it, you could rethink it you could decide what you want to do if you want to withdraw this, if you want to change it, if you want us to vote on this how it is.

Mr. John Klarl stated for example you saw people before do the same thing they adjourned to talk to their professional.

Mr. John Mattis stated I think that's in your best interest to do that.

Mr. Matt Mello responded we'll go that route then.

Mr. John Mattis asked is there anybody in the audience who would like to speak?

Mr. Alsdorf presented himself to the Board and stated I live on 27 School Street and I'm Matt's neighbor and I'm in favor of the variance and I really do think that esthetically that a larger instead of that little stoop, you know something larger on the front will just improve the whole look of the neighborhood in general and I don't think that's going to change anybody's mind right off the bat but I figured I might as well say it.

Mr. John Mattis responded I think that esthetically it would be much better but that's not one of the things we're really allowed to consider. If we considered esthetics I think that your decision would be a fairly easy one but that isn't what we can really consider because we'd be granting variances all over just to clean up old properties and things. But we appreciate your comments.

Mrs. Adrian Hunte asked Mr. Mello the deck is to be 18 feet wide, correct?

Mr. James Flandreau responded six feet off of the house and 18 feet wide is what the question is.

Mrs. Adrian Hunte asked would you be able to cut that down, the six feet, to four would that be too small?

Mr. Matt Mello responded I could look at it and see if – I think we looked at it and six feet seemed like you know the amount of room that you could put a chair in there, not a rocking chair

but some sort of chair there to be able and sit down and have some leg room, it seemed like six feet was where you'd want to be. We actually sat out there with a chair to get a feel for how far out we should go knowing that we'd need a variance. We're really trying to figure out the least amount of space that we need to go out where we'd still be comfortable. Could we cut it back to five? Could we cut it back to four? It's definitely a possibility. I don't know how that looks with the roof. A whole bunch of things I don't know about there.

Mr. John Mattis stated that's why I time out at this point. An adjournment might be a good idea.

Mrs. Adrian Hunte stated and to consider the other option which was the patio.

Mr. Charles Heady stated one other thing before I make the motion. I went up and down that street I didn't notice the other house next to him that was sticking out further than his. They all look the same until you look at them close you see the house next door comes out much further. It is a concern there. I make a motion in **case 23-09** to adjourn the public hearing until August, seconded with all in favor saying "aye."

Mr. John Mattis stated so August 19th, the third Wednesday.

D. CASE No. 24-09 William Dwyer for an Area Variance from the front yard setback requirement for a proposed second story addition on the property located at **27 Cardoza Avenue, Mohegan Lake.**

Mr. Bill Dwyer presented himself to the Board and stated I live at 27 Cardoza Avenue, Mohegan Lake, NY. My wife and I are looking to put a second story addition on our house. Unfortunately, our existing house is not conforming with the setback so what we were looking to do is just go straight up. We're not going to increase the footprint and that's basically it.

Mr. David Douglas asked if I understand correctly that the second floor is going to be straight above the first floor except it's going to be cantilevered out one foot, right?

Mr. Bill Dwyer responded I'm told 11 inches, but maybe a foot.

Mr. David Douglas stated I initially to the extent that it was going straight up I have no problem whatsoever with it. Your house, the way its situated, already is set forward and if you're just going up parallel to that I didn't have a problem with it at all. My initial reaction was to say personally it's fine as long as you're going straight up and I don't have a problem with that one foot. But, during our work session we talked about it and I was enlightened about construction and was informed that when you're doing a modular construction that they might have to cantilever things out in the front for structural reasons and that sounded completely convincing to me. I have no reservations whatsoever which is a long winded way of saying this is perfectly fine with me.

Mr. John Mattis stated I went up and looked at that. First of all you're going straight up, you

might be coming out a little bit. You're not coming six feet like the porch earlier and if you look at all the houses in the neighborhood not only on that street but on Camp Street and I forget the other street is before you get to yours. Houses are close to the property line, they're back, it's not like the last case where they're all pretty much in a row so even if you come out another foot or so because you're going up basically it really doesn't have any impact at all.

Mr. Raymond Reber stated the two houses to the left are closer to the road.

Mr. Bill Dwyer responded yes they are. I never noticed it until this process.

Mr. John Mattis stated you were probably thinking about that as the last case was unfolding.

Mr. Wai Man Chin stated I'd like to say that the house itself is also within the setback requirements already. It's just adding another foot to that second story addition.

Mr. John Mattis stated since there's no one in the audience to speak we can move on with this case.

Mr. David Douglas stated I move that we close the public hearing, seconded with all in favor saying "aye." I move on **case no. 24-09** that we grant an area variance from the front yard setback requirements for a second story addition from the required 30 feet down to 25.25 feet this is a SEQRA type II no further compliance required, seconded with all in favor saying "aye."

Mr. John Mattis stated your variance is granted.

CLOSED AND RESERVED DECISION

A. CASE No. 09-09 Anthony Cesarini, Contract Vendee, for an Area Variance for the lot width on the property located at 0 Barger Street, Cortlandt Manor.

Mr. John Klarl stated we have this application on the April agenda. At the May agenda, the applicant requested that we adjourn it to the June agenda. On June 17th we opened up the public hearing once again and there was no one here to present the case so that we closed the public hearing that night and the Board directed the decision that they wanted this case. I having reviewed the Decision and Order with Mr. Flandreau a contact to the other side to tell them that we wanted to have the whole Board to look at the Decision and Order and adopt it at this meeting. So, with that, I received a letter from Timothy L. Cronin, the professional engineer and he wrote to us yesterday and he says: "as you know we are the engineering consultants the above applicant Anthony Cesarini, Contract Vendee. First, both my client and I wish to apologize to the Board for failing to appear at the June 17th Zoning Board of Appeals meeting. As we explained to the Board, there's a missed communication with our Contract Vendor's representative as to who was attending the public hearing. Second, we are writing to acknowledge the Zoning Board of Appeals close the public hearing on June 17th and to confirm

that we consent for the 62 days after the closed public hearing in this case to decide this appeal by the adoption of the Board's formal Decision and Order pursuant to New York State Town Law section 267-a subdivision 278." Mr. Cronin submitted that letter to us and with that Mr. Flandreau has revised his proposed Decision and Order consistent with our work session discussion on Monday night. I think Mr. Flandreau has the revised Decision and Order as reviewed by the Board on Monday.

Mr. John Mattis asked any discussion on this Decision and Order?

Mr. Raymond Reber responded I think it's consistent with the vote that was taken at the last meeting.

Mr. John Mattis asked could we have a motion to accept the Decision and Order? So moved, seconded, with all in favor saying "aye." The Decision and Order as proposed tonight is adopted. One last order of business just for information we received a letter from an attorney for Mr. Sheldon Gardner who asked us to reconsider an interpretation of his property that is not a pre-existing contractor's yard. The attorney is Edward McCormick. Mr. McCormick is receiving a letter from Mr. Flandreau that states that we've received his letter but the Board does not agree to reconsider the prior interpretation application which was memorialized in the Board's Decision and Order adopted August 20th, 2008. This was **case no. 09-08**. We will not even be voting to re-open that. There were no reasons given and we'd set a terrible precedence if everybody came in a year later and said "please re-open my case," with no information or anything. This is just being done through Mr. Flandreau sending the letter. Is there any other business? Do we have a motion to adjourn please? So moved, seconded with all in favor saying "aye." The meeting's adjourned.

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**NEXT MEETING DATE:
August 19, 2009**